

Zoning Text Amendment No.: 16-16  
Concerning: Conditional Use  
Decisions  
Draft No. & Date: 2 - 11/17/16  
Introduced: November 29, 2016  
Public Hearing:  
Adopted:  
Effective:  
Ordinance No.:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF  
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN  
MONTGOMERY COUNTY, MARYLAND**

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Lead Sponsor: Council President Floreen at the Request of the  
Office of Zoning and Administrative Hearings

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance that is effective  
October 30, 2014 to:

- amend provisions governing OZAH's decisions in conditional use cases;
- amend provisions governing requests for oral argument before the Board of Appeals in conditional use cases;
- permit applicants for conditional uses approved by the Hearing Examiner to implement a conditional use when a request for oral argument before the Board of Appeals is pending;
- authorize the Board of Appeals to stay the Hearing Examiner's decision upon motion of any party;
- authorize the Board of Appeals to place conditions on the approval or denial of requests for a stay;
- generally amend provisions concerning conditional use appeals.

By amending the following sections of the Montgomery County Zoning Ordinance,  
Chapter 59 of the Montgomery County Code effective October 30, 2014 (as amended):

Division 59-7.3.        "Regulatory Approvals"  
Section 59-7.3.1.     "Conditional Use"

**EXPLANATION:** ***Boldface** indicates a Heading or a defined term.*  
*Underlining indicates text that is added to existing law by the original text amendment.*  
*[Single boldface brackets] indicate that text is deleted from existing law by original text amendment.*  
*Double underlining indicates text that is added to the text amendment by amendment.*  
*[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.*  
*\* \* \* indicates existing law unaffected by the text amendment.*

## *ORDINANCE*

*The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance*

**Sec. 1. DIVISION 59-7.3 is amended as follows:**

\* \* \*

**Division 7.3. Regulatory Approvals**

\* \* \*

**Section 7.3.1. Conditional Use**

\* \* \*

**F. Decision**

**1. Hearing Examiner**

- a. The Hearing Examiner must issue a report and decision no later than 30 days after the close of the record of the public hearing. The decision may [recommend that the application be approved, approved] approve, approve with conditions, or [denied] deny the application. The Hearing Examiner may supplement the specific requirements of this Chapter with any other requirements necessary to protect nearby properties and the general neighborhood. The Hearing Examiner may by order extend the time to issue the report and decision.
- b. The Hearing Examiner must issue a notice, on the day the report and decision is issued, to the Board of Appeals, the applicant, and all parties of record that the report and decision [is complete] has been issued and is available for review. [If a timely request for oral argument is not received under Section 7.3.1.F.1.c, the Hearing Examiner's report and decision becomes the final decision.] The Hearing Examiner's report and decision is effective on the date issued.
- c. Any party of record [or aggrieved party may file] may appeal the Hearing Examiner's decision by filing a written request to

present oral argument before the Board of Appeals within 10 days after the Office of Zoning and Administrative Hearings issues the Hearing Examiner's report and decision. The filing of such a request transfers jurisdiction over the matter on appeal from the Hearing Examiner to the Board of Appeals.

i. A written request for an appeal and oral argument must be filed with the Board of Appeals and the Hearing Examiner, and must concisely identify the matters to be presented at the oral argument. A person requesting an appeal must send a copy of that request to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

ii. Any party of record [or aggrieved party] may, no later than 5 days after a request for an appeal and oral argument is filed, file a written opposition or request to participate in oral argument. An opposition to a request for an appeal and oral argument must be sent to the Board of Appeals and all parties as listed by the Hearing Examiner, and must be concise and limited to matters raised by the party who requested oral argument.

iii. The Board of Appeals may, in its discretion, grant or deny an oral argument request. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner.

iv. Regardless of whether the Board of Appeals has elected to hear oral argument, the Board of Appeals must, under

Section 7.3.1.F.2, approve or deny the appealed  
conditional use application or remand it to the Hearing  
Examiner for clarification or the taking of additional  
evidence, if appropriate.

v. A request for an appeal of the Hearing Examiner's  
decision does not stay the decision of the Hearing  
Examiner. Upon motion by any party, the Board of  
Appeals may grant or deny a stay. The Board of Appeals  
may impose conditions on the grant or denial necessary  
to protect nearby property owners and the neighborhood.

2. Board of Appeals

a. If the Board of Appeals is deciding the appeal of an application,  
it must make the necessary findings under Section 7.3.1.E and  
must:

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**Sec. 3. Effective date.** This ordinance becomes effective 20 days after the  
date of Council adoption.

This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council